

THE HONORABLE ROBERT S. LASNIK

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICHAEL MOI, an individual,
Plaintiff,

v.

CHIHULY STUDIO, INC., a Washington
corporation; DALE CHIHULY,
individually and as a married person;
LESLIE CHIHULY, individually and as a
married person,
Defendants.

CHIHULY INC., a Washington
corporation; and DALE CHIHULY,
individually,
Counterclaim-
Plaintiffs,

v.

MICHAEL MOI, an individual,
Counterclaim-
Defendant

No. 2:17-cv-00853-RSL

MOTION TO FILE DOCUMENTS UNDER
SEAL (MOI'S RESPONSIVE FILINGS)

NOTE ON MOTION CALENDAR:
March 1, 2019

MOTION TO FILE DOCUMENTS UNDER SEAL
(No. 2:17-cv-00853-RSL)

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I. INTRODUCTION

On Wednesday, February 6, after failing to timely oppose Defendants Motion to File Documents Under Seal (Dkt. # 80) (the “Prior Motion to Seal”), Plaintiff Moi (“Moi”) publicly filed a response that openly discusses the same confidential information that was the subject of that motion. That same day and shortly after Moi’s public filing, the Court granted the Prior Motion to Seal. Also that same day, Defendants contacted Moi to address the issue, but Moi refused to withdraw his public filings, arguing that he had no obligation to respect either the Prior Motion to Seal, or the Court’s subsequent order sealing the information at issue. Although Moi temporarily relented and tentatively agreed to replace his public filings with properly redacted versions, he subsequently withdrew this offer, asserting his right to “leverage” the Confidential Information “against [Defendants]” and threatening that Defendants “are about to pay a high price[.]” Moi filed another declaration this morning. Dkt. # 104.

Defendants now move for relief for this Court, and an order sealing Moi’s public filings in a manner consistent with this Court’s prior orders. This motion is supported by the declaration of William C. Rava (“Rava Decl.”), the exhibits attached thereto, and the records in this case. Proposed redactions for Moi’s filings are attached as Exhibits B-E to the Rava Declaration.

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II. BACKGROUND

On January 24, 2019, Defendants filed a Motion for Protective Order (Dkt. # 82) (the “PO Motion”) in order to prevent Moi from accessing its sensitive, and irrelevant, confidential documents, as well as documents covered by the attorney client privilege (the “Confidential Information”). In connection with the PO Motion, Defendants filed the Prior Motion to Seal to keep details and discussion of these materials out of the public record. Moi did not timely oppose either motion, and, on February 6, the Court granted the Prior Motion to Seal. Dkt. # 98.

1 While the Prior Motion to Seal was still pending—and several hours before the Court
2 granted it—Moi publicly filed his responses to these motions (“the Responses”), which disclosed
3 much of the Confidential Information that Defendants sought to maintain under seal. Dkt. ## 93,
4 94, 95 & 96.¹

5 Defendants promptly contacted Moi when they realized that Moi had publicly filed the—
6 now sealed—Confidential Information. Rava Decl. ¶ 2. Specifically, Defendants requested that
7 Moi “confirm that you will immediately withdraw your public filings and re-file redacted copies
8 consistent with the Court’s sealing order.” Rava Decl., Ex. A at 10. Moi refused, claiming that
9 he did not learn about the Confidential Information from Defendants and—notwithstanding the
10 Prior Motion to Seal, and this Court’s subsequent order sealing the information—he was entitled
11 to file the Confidential Information publicly. *Id.* at 8-10.

12 Defendants held a telephonic conference with Moi later that day, Thursday, February 7.
13 Rava Decl. ¶ 3. Among other things, Defendants explained that Moi’s purported independent
14 knowledge of the Confidential Information did not give him a right to publicly file sealed court
15 documents and, if he believed such knowledge was a basis for unsealing the material, he should
16 have—but did not—raise the issue in opposition to the Prior Motion to Seal. *Id.*, Ex. A at 5.
17 Defendants further explained that, pursuant to LCR 5, because Moi knew that Defendants
18 considered this information confidential (both from the substance of the Motion to Seal, and the
19 parties’ pre-filing communications), he should have filed the information under seal, and given
20 Defendants an opportunity to justify maintaining it as such. *Id.*

21 Following the parties’ conference, on Friday, February 8, Defendants sent Moi proposed
22 redactions for the Responses, and Moi tentatively agreed to replace the public filings with
23 redacted versions, though he maintained that he had no obligation to do so. Rava Decl. ¶ 4. Moi
24 represented that he had contacted the Court to seal the Responses until the redacted versions
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26 ¹ The Declaration of Doyle LaCount (Dkt. # 97) does not contain any references to the Confidential
Information. Defendants, therefore, do not request that the Court seal this document.
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1 could be filed, and that the Court had agreed to do so. *Id.* Defendants called the Court and
2 confirmed that it intended to seal the public filings. *Id.*

3 Later on Friday, February 8, Defendants filed a Supplemental Reply In Support of
4 Motion for Protective Order (the “Reply”) arguing (among other things) that, in addition to
5 Moi’s failure to identify a legitimate purpose for the Confidential Information’s disclosure, his
6 public disclosure of the Confidential Information in the face of the Prior Motion to Seal that
7 same information demonstrated that Moi should not be granted access to it. Dkt. # 101.

8 The following day, Saturday, February 9, Moi wrote Defendants to say that he considered
9 the Reply to be a “personal attack,” that he was entitled to “leverag[e] his right to publicize
10 independently obtained information against [Defendants],” and that his “agreement to redact
11 [his] filings is withdrawn.” Rava Decl., Ex. A at 1. He concluded, saying that Defendants are
12 “about to pay a high price for this behavior.” *Id.* Apparently further to that threat, Moi filed a
13 supplemental declaration on Monday, February 11. See Dkt. # 104 ¶ 1.

14 To date, the Responses have not been sealed.

15 III. CERTIFICATION

16 Pursuant to LCR 5(g)(3)(A), counsel for Defendants certifies that they have met and
17 conferred with Plaintiff’s counsel regarding the need for this motion. Rava Decl. ¶ 3. This
18 attempt was unavailing. *Id.* at ¶¶ 3-4.

19 IV. ARGUMENT

20 The material sought to be sealed includes references to and discussion of the same
21 information that Defendants requested remain under seal, and that the Court has now sealed on
22 two occasions. Dkt. ## 19, 55, 80, 99. The basis for sealing this information was explained in
23 the Prior Motion to Seal (Dkt. # 80), and has been accepted by this Court. Dkt. ## 98, 99.

24 LCR 5(g)(2) provides that where a party files a document under seal, supported by a
25 proper motion, “[t]he document will be kept under seal until the court determines whether it
26 should remain sealed.” Defendants, therefore, had a right to maintain the Confidential

1 Information under seal pending resolution of the Prior Motion to Seal. By discussing the
2 Confidential Information in a publicly filed response to the Prior Motion to Seal (as well as in
3 response to the underlying PO Motion), Moi took the decision of whether to seal this information
4 out of the Court's hands. Moi's decision to do so is not only inconsistent with his obligations
5 under LCR 5(g), but runs afoul of this Court's subsequent order sealing the information. Dkt. ##
6 98, 99. Moi's public filing of the Confidential Information is improper and, if uncorrected, will
7 be highly prejudicial to Defendants.

8 Pursuant to LCR 5(g)(5), if Moi could not "avoid including confidential information" in
9 his opposition he was *required* to "redact the confidential information from the [publicly filed
10 opposition] . . . and . . . file the unredacted . . . opposition . . . under seal[.]" Moi knew that
11 Defendants considered the information confidential because it was clear from the face of the
12 Prior Motion to Seal, and because Defendants made this clear in pre-filing communications.
13 Indeed, the basis for Defendants' objection to the Confidential Information's production was that
14 it was *confidential* and irrelevant. *See generally* Dkt. # 82. Moi's purported independent
15 knowledge does not constitute a basis for disregarding Defendants' request to seal the
16 information, or the Court's subsequent order sealing it. If Moi believed his knowledge did
17 provide such a basis, he should have properly raised this argument in opposition to the Prior
18 Motion to Seal. He did not. Again, Moi's decision to publicly file this confidential, and now
19 sealed, information was improper and must be corrected.

20 V. CONCLUSION

21 For the reasons expressed in the Prior Motion to Seal (Dkt. #80), good cause exists to seal
22 the Confidential Information contained in the Responses. The Court should, therefore GRANT
23 Defendants' motion, seal docket entries ## 93-96 and file the redacted versions of these
24 documents attached as Exhibits B-E of the Rava Declaration.
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2 DATED: February 11, 2019

s/ Harry H. Schneider, Jr., WSBA No. 9404

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CERTIFICATE OF SERVICE

I certify that on February 11, 2019, I caused the foregoing to be served on the following attorney(s) of record by the method(s) indicated:

Lincoln C. Beauregard	<input type="checkbox"/> Via U.S. Mail, 1st Class, Postage Prepaid
Evan T. Fuller	<input type="checkbox"/> Via Hand Delivery
Connelly Law Offices	<input type="checkbox"/> Via Overnight Delivery
2301 North 30th Street	<input type="checkbox"/> Via Facsimile
Tacoma, WA 98403	<input checked="" type="checkbox"/> Via ECF
lincolnb@connelly-law.com	
efuller@connelly-law.com	

I certify under penalty of perjury that the foregoing is true and correct.

DATED this 11th day of February, 2019.

s/ Harry H. Schneider, Jr.
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